

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
The State of Mobile)	WT Docket No. 13-135
Wireless Competition)	
)	

**REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

I. Introduction

The National Association of Broadcasters (NAB)¹ hereby responds to the *Public Notice* (Notice) issued by the Wireless Telecommunications Bureau (WTB or Wireless Bureau) on May 17, 2013, seeking input and data on the state of mobile wireless competition in the United States.² Information and data collected in this proceeding will help the Commission draft its annual report to Congress on wireless competition. As these commercial mobile reports inform Congress about the state of the mobile wireless industry and, in turn, may affect Congressional policy toward communications services, including broadcasting, generally, it is critical that the reports be as comprehensive and accurate as possible.

¹ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the FCC and other federal agencies, and the courts.

² See Public Notice, "Wireless Telecommunications Bureau Seeks Comment on the State of Mobile Wireless Competition," WT Docket No. 13-135 (rel. May 17, 2013).

The Notice here asks a number of important questions that, if answered fully, would provide a detailed and thorough view of mobile wireless use of licensed spectrum.³ Unfortunately, the mobile wireless providers commenting in this proceeding have effectively ignored those questions. Instead of submitting information and data informing the Commission about how they actually use their currently allocated spectrum, mobile wireless commenters focus on how the Commission can and should clear more spectrum for mobile broadband use. As a result, the Commission and Congress remain in the dark as to whether wireless providers are using their licensed spectrum efficiently.

NAB submits that it is not sufficient to analyze only who is licensed to use commercial spectrum in this country. Rather, the more important question is whether and how intensely licensees use spectrum and where. Without this critical information, the Commission cannot make optimal – or even rational – spectrum management decisions.

II. The Commission Should Collect Meaningful Data on How, Where, and the Extent to Which Commercial Spectrum is Used in the United States

The effective use of spectrum is – and should continue to be – at the center of the FCC’s assessment of competition in the wireless industry. Accordingly, the questions posed in the Notice – especially those related to spectrum utilization – are

³ See Notice at 5-6 (Key questions include: “How do mobile wireless service providers and spectrum licensees currently use their licensed spectrum? Are certain frequencies used heavily while others lie fallow? How does this vary across different types of geographic areas? How much spectrum is unused or underutilized? To what extent do spectrum licensees lease, partition, or disaggregate their spectrum? How much of the spectrum available for the provision of mobile wireless services is actually used to provide service? Are there any data or estimates available on spectrum utilization or non-utilization/warehousing?”).

critical and should be answered fully so that the Commission can provide an informed report to Congress. Unfortunately, many of the comments responding to the Notice fail to address the wireless industry's current utilization of spectrum licenses. In particular, the large mobile wireless carriers focus almost exclusively on future spectrum allocations while providing scant evidence that they are utilizing their existing spectrum efficiently.⁴

Despite a "baseline inventory" completed in 2011,⁵ the Commission still lacks any comprehensive data on how intensively wireless companies use the spectrum already licensed to them.⁶ For that reason, when asked about spectrum efficiency and utilization, the Commission can only point the public toward resources such as "LicenseView" and "Spectrum Dashboard" as an "inventory" of non-federal spectrum.⁷ These resources provide an overview of license holdings and available spectrum, but they do not analyze or assess the most important consideration – how efficiently each license holder uses its licensed spectrum.

Without more concrete data on actual usage, the Commission cannot rationally determine whether more efficiency or more spectrum is the better answer to a perceived

⁴ See, e.g., Comments of Verizon Wireless in WT Docket No. 13-135, at 56-58 (filed June 17, 2013); Comments of T-Mobile, Inc., in WT Docket No. 13-135, at 4-14 (filed June 17, 2013).

⁵ See Letter from Chairman Julius Genachowski to Rep. Robert E. Latta Regarding Spectrum Inventory (Mar. 18, 2011), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-305390A1.pdf.

⁶ See Harry Cole, *Spectrum Inventory Tools: Touts and Doubts*, CommLawBlog (Apr. 9, 2011), *available at* <http://www.commlawblog.com/2011/04/articles/broadcast/spectrum-inventory-tools-touts-and-doubts/>.

⁷ See Letter from Chairman Julius Genachowski to Rep. Robert E. Latta Regarding Spectrum Inventory, (Mar. 18, 2011), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-305390A1.pdf.

spectrum crunch in the nation's largest markets.⁸ It is possible to use current wireless spectrum allocations more intensely.⁹ The carriers apparently are very aware of this fact. Interestingly, some of the most reliable information on wireless carrier efficiency comes from other carriers. In recent wireless industry transactions, Sprint and T-Mobile have each asserted that other carriers are not efficient users of their spectrum.¹⁰

The Commission can and should mine the carrier data. The question of how best to handle a supposed spectrum crunch¹¹ demands, at the very least, a more complete picture of mobile wireless spectrum use across all markets.

⁸ No crunch is claimed beyond the top 20-25 markets.

⁹ For example, a 2011 analysis by Sanford Bernstein concluded that U.S. wireless networks utilize 75 percent fewer base stations than European networks in areas with similar levels of density. See Dave Burstein, "U.S. Wireless: 75% Fewer Basestations Than Comparable Europe," DSLPrime.com, June 25, 2011, available at <http://dslprime.com/a-wireless-cloud/61-w/4466-us-wireless-75-fewer-basestations-than-comparable-europe> (citing: Robin Bienenstock and Craig Moffett, Bernstein Research, "European and U.S. Telecommunications" at 2 (June 24, 2011) (explaining that European networks are so much denser because spectrum auctions in Europe come with "use it or lose it clauses" that obliged operators to build a minimum number of base stations or face sanctions from fines to loss of spectrum)).

¹⁰ See *Applications of AT&T Inc. and Deutsche Telekom AG For Consent to Assign or Transfer Control of Licenses and Authorizations*, Petition to Deny at 79, WT Doc. No. 11-65 (May 31, 2011) available at <http://apps.fcc.gov/ecfs/document/view?id=7021675883>. See also *Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC for Consent to Assign Licenses and Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LLC for Consent to Assign License*, Reply of T-Mobile, USA, Inc. to Opposition to Petition to Deny, at 9, WT Docket No. 12-4 (March 6, 2012), available at <http://apps.fcc.gov/ecfs/document/view?id=7021904802>.

¹¹ See Brian X. Chen, *Carriers Warn of Crisis in Mobile Spectrum*, THE NEW YORK TIMES, Apr. 17, 2012, available at <http://www.nytimes.com/2012/04/18/technology/mobile-carriers-warn-of-spectrum-crisis-others-see-hyperbole.html?pagewanted=all>; Deborah D. McAdams, *Analyst: Spectrum Control is Constraining Supply*, TVTECHNOLOGY, Sept. 26, 2011, available at <http://www.tvtechnology.com/news/0086/broadcast-lobby-calls-for-spectrum-inventory/article/analyst-spectrum-control-is-constraining-supply/210376>.

Despite this lack of information, wireless carriers continue to assert, in response to this Notice and elsewhere, that their current spectrum holdings are not enough keep pace with rising mobile data demands.¹² It is important to recognize, however, that the commercial wireless industry's continued push for more spectrum – apparently with no bounds¹³ – is not sustainable as a practical matter. Simply put, the answer to every surge in usage cannot be to throw more spectrum at the problem without considering other solutions or other costs. Even if it was readily available, which it is not, such an approach to capacity issues produces disincentives for investment in infrastructure and technology improvements.¹⁴ To improve long-term spectrum management, the Commission therefore should evaluate the degree to which the wireless industry is maximizing its use of the very substantial amount of spectrum already allocated to it. The Commission's interest in spectrum for new entry and innovation would also be served by scrutiny of usage by current license holders. Such an analysis may well identify areas where smaller players could create new business models and service.

¹² See Comments of T-Mobile US, Inc. in WT Docket No. 13-135, at 4 (filed June 17, 2013) (“The availability of new spectrum ... is being quickly outpaced by the demand for wireless broadband capacity.”); See also Comments of CTIA – The Wireless Association in WT Docket No. 13-135, at 61 (filed June 17, 2013) (“At the same time that the mobile wireless market is expanding rapidly, the U.S. is facing an imminent and significant shortfall of usable licensed mobile spectrum.”).

¹³ See Letter from Christopher Guttman-McCabe, Vice President, Regulatory Affairs, CTIA, to Julius Genachowski, Chairman, Federal Communications Commission, *et al*, GN Docket No. 09-51 (filed Sept. 29, 2009) (“While it is impossible to quantify precisely what amount of additional spectrum would be ‘future proof’ ... an allocation [of at least 800 MHz of spectrum] would be an important step towards meeting rapidly accelerating demand and maintaining U.S. leadership in the global mobile broadband marketplace.”).

¹⁴ Because the “cheapest way to increase capacity is to add more spectrum ... operators tend to lobby governments for more and better spectrum before investing in expensive kit.” “Will the Rapid Growth in Data Traffic Overwhelm Wireless Networks?” *The Economist* (Feb. 11, 2010), available at <http://www.economist.com/node/15498399>.

Major wireless operators hold a large and growing amount of spectrum. Both the President and the FCC have touted their work to make more spectrum available for the commercial wireless industry.¹⁵ In the past year alone, the FCC has freed up nearly 70 MHz of prime spectrum through changes to its WCS rules¹⁶ and by creating the AWS-4 band.¹⁷ Both of these previously fallow bands add considerably to the already substantial spectrum allocations available to the commercial wireless industry.

Moreover, the wireless industry has made great strides in rationalizing its spectrum holdings. Numerous transactions in the last year alone should result in much better use of the substantial blocks of spectrum dedicated to the wireless industry. Verizon Wireless acquired a large amount of nearly nationwide spectrum from SpectrumCo and Cox, which had been completely unused since it was auctioned in 2006.¹⁸ As part of that transaction, Verizon Wireless also traded a number of AWS

¹⁵ See Memorandum from The White House, Office of Press Secretary, on Expanding America's Leadership in Wireless Innovation (rel. June 14, 2013) available at <http://www.whitehouse.gov/the-press-office/2013/06/14/presidential-memorandum-expanding-americas-leadership-wireless-innovation>; See also *The Mobile Broadband Spectrum Challenge: International Comparisons*, Wireless Telecommunications Bureau, Office of Engineering and Technology, Federal Communications Commission, (Feb. 26, 2013) available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-318485A1.pdf.

¹⁶ See *Operation of Wireless Communications Services in the 2.3 GHz Band; Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band*, Order on Reconsideration, 27 FCC Rcd 13651 (Oct. 17, 2012).

¹⁷ See *In the Matter of Serv. Rules for Advanced Wireless Servs. in the 2000-2020 MHz & 2180-2200 MHz Bands*, Report and Order, 27 FCC Rcd 16102 (Dec. 17, 2012).

¹⁸ See *In The Matter Of Applications Of Cello Partnerships D/B/A Verizon Wireless and Spectrumco LLC and Cox TMI Applications of Verizon Wireless and Leap for Consent to Exchange Lower 700 MHz, AWS-1, and PCS Licenses Applications of T-Mobile License LLC and Celco Partnership d/b/a Verizon Wireless for Consent to Assign Licenses*, 27 FCC Rcd 10125 (2012).

blocks with T-Mobile to give it more contiguity across its AWS holdings.¹⁹ T-Mobile not only benefitted from those swaps, but it: (1) received additional spectrum from Verizon Wireless in that transaction; (2) received a great deal of spectrum from AT&T as part of the break-up fee in the failed merger with AT&T; and (3) merged with MetroPCS, thereby acquiring a substantial amount of spectrum in key markets, including New York.²⁰ AT&T has engaged in a large number of smaller transactions in order to put fallow spectrum to use. Among its more significant transactions, it acquired nearly the rest of the WCS band once the FCC made needed rules changes,²¹ and it recently agreed to purchase a good deal of 700 MHz spectrum from Verizon Wireless.²² They have already recently made a bid to purchase Leap Wireless for \$1.2 Billion, a bid, which, if successful, will give AT&T substantial new spectrum holdings on which to build out 4G LTE services.²³ As for Sprint, it is expecting an infusion of cash from Softbank

¹⁹ *Id.*

²⁰ *Id.* at 71.

²¹ Applications of AT&T Mobility Spectrum LLC, Triad 700, LLC, CenturyTel Broadband Wireless, LLC, 700 MHz, LLC, Cavalier Wireless, LLC, Ponderosa Telephone Co., David L. Miller, Comsouth Tellular, Inc., Farmers Telephone Company, Inc., and McBride Spectrum partners, LLC for Consent to Assign Licenses, *Memorandum Opinion & Order*, 27 FCC Rcd 15,831 (2012).

²² Chloe Albanesius, "AT&T Buys Verizon Spectrum for \$1.9 Billion," PCMag.com (Jan. 25, 2013, 12:04 p.m.) *available at* <http://www.pcmag.com/article2/0,2817,2414702,00.asp>.

²³ William Alden and Michael J. De La Merced, "AT&T to Buy Leap Wireless for \$1.2 Billion," *New York Times* (July 12, 2013), *available at*: <http://dealbook.nytimes.com/2013/07/12/att-to-buy-leap-wireless-for-1-2-billion>; see also Kevin Fitchard, "A Bird's Eye View of the AT&T Leap Wireless Merger," GigaOM (July 15, 2013), *available at*: <http://gigaom.com/2013/07/15/a-birds-eye-view-of-the-att-leap-wireless-merger/>.

once that transaction closes,²⁴ and it has made a strong play for complete control of Clearwire,²⁵ which would make it by far the largest holder of spectrum in the U.S., despite the fact that Sprint is the third largest provider of mobile wireless services.

Given the Commission's recent work to reallocate underutilized spectrum and the commercial wireless industry's continuing effort to rationalize its spectrum holdings, it is time for the Commission to conduct a *thorough* analysis of the current spectrum licenses held by wireless companies and how they utilize that spectrum. The Commission and Congress cannot implement sound spectrum policies going forward without that vital information.

III. Conclusion

To manage commercial spectrum in the United States effectively, it is imperative that the Commission gather more information on how intensely mobile broadband providers use their already-allotted spectrum in various geographic markets. The Notice asks a number of important questions that, if answered accurately and fully by wireless companies, would provide a robust picture of spectrum use in this country. Because, to date, those answers are lacking, the Commission must conduct a thorough analysis of actual spectrum usage. Broadcasters stand ready to participate.

²⁴ Roger Yu, "Sprint Shareholders OK Softbank Acquisition," USA Today (June 25, 2013, 3:07 p.m.) *available at* <http://www.usatoday.com/story/money/business/2013/06/25/sprint-shareholders-approval/2456501/>.

²⁵ Liana B. Baker and Sinead Carew, "Dish bows out of battle with Sprint over Clearwire," Reuters (June 26, 2013, 6:52 p.m.) *available at* <http://www.reuters.com/article/2013/06/26/us-dish-clearwire-idUSBRE95P1C320130626>.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rick Kaplan", with a long horizontal line extending to the right.

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